THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.17196 of 2006

Date: 20.09.2006

The Government of Andhra Pradesh, Higher Education Department, Secretariat, Hyderabad and two others.

... Petitioners.

And

S. Rama Rao.

... Respondent.

THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.17196 of 2006

JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

The present writ petition is filed against the order of the Tribunal, in O.A.6893 of 2004 dated 28.10.2005, whereby the action of the petitioners herein in treating the period of suspension of the applicant as extraordinary leave, was held to be illegal and the petitioners herein were directed to treat the period spent by the respondent – applicant under suspension, in both the spells i.e., from 23.9.1989 to 26.3.1990 and again from 26.10.1993 to 25.6.1997, as on duty.

Facts, in brief, are that the respondent – applicant was placed under suspension, vide proceedings dated 13.9.1989 pending enquiry into certain allegations against him. He was reinstated into service, vide proceedings dated 24.2.1990, and was permitted to join duty on 26.3.1990. The disciplinary proceedings ended in the imposition of punishment of stoppage of one increment without cumulative effect, vide proceedings dated 29.11.1995. In the meanwhile, the respondent-applicant was again placed under suspension, vide proceedings dated 14.10.1993, on the ground of pendency of the criminal case, filed against him by the officials of A.P.S.E.B, alleging pilferage of electricity. In the said criminal case (C.C.202/93), the respondent – applicant was

acquitted by the criminal court by its judgment dated 25.11.1995. The respondent was eventually reinstated into duty on 10.6.1997. He was thus under suspension from 26.10.1993 to 25.6.1997 during this spell. Even after the respondent – applicant was acquitted in the criminal case, no disciplinary proceedings were initiated against him. The respondent – applicant submitted a representation on 8.4.2004, to the 3rd petitioner – herein, to treat both the spells of suspension, from 23.9.1989 till 26.3.1990 and again from 26.10.1993 till 25.6.1997, as on duty with full pay and allowances, with all consequential benefits, to fix his pay in the revised pay scales with all attendant benefits and to pay arrears with 18% interest per annum.

The respondent-applicant filed O.A.2901 of 2004, and the Tribunal, by order dated 4.5.2004, directed the 3rd petitioner herein to dispose of the representation of the respondent-applicant dated 8.4.2004 in terms of F.R.54-B and pass appropriate orders within four weeks from the date of receipt of a copy of the order. On receipt of the orders of the Tribunal, the Director of Intermediate Education, vide proceedings dated 6.8.2004, after careful examination of the facts of the case, held that the period from 23.9.1989 to 26.3.1990 (1st spell) and the period from 26.10.1993 to 25.6.1997 (2nd spell) be treated as extraordinary leave without pay and allowances. Aggrieved thereby the respondent applicant filed O.A.6893 of 2004. The Tribunal held that the respondent-applicant was placed under suspension, in two different spells, when the proviso to FR54-B was in existence, and that consequent upon the first spell of suspension the respondent-applicant was inflicted with the minor punishment of stoppage of one increment

without cumulative effect. The Tribunal held that the respondent-applicant was entitled to be treated as on duty in accordance with the provision which existed then, and, since the petitioners herein had not initiated disciplinary proceedings consequent upon conclusion of the criminal proceedings and the respondent-applicant had been reinstated into service and further promoted as a Principal, under such circumstances, when they had taken a decision to regulate the period spent under suspension during the spell, they ought to have taken note of the proviso which was in existence at the relevant period of time. Relying on the judgment of the Supreme Court, in **Y.V. Rangaiah v. J. Sreenivasa Rao**[1], the Tribunal held that the action of the petitioners herein in treating the period of suspension as extraordinary leave did not hold water for the simple reason that during the relevant period of time the proviso to F.R.54-B was in existence and the case of the respondent-applicant was required to be treated in the light of the proviso. On setting aside the impugned order, the Tribunal directed the petitioners herein to treat the period spent by the respondent-applicant under suspension, in both the spells from 23.9.1989 to 26.3.1990 and again from 26.10.1993 to 25.6.1997, as on duty. Aggrieved thereby, the present writ petition is filed.

Learned Government Pleader for Higher Education would submit that, in so far as the first spell of suspension from 23.9.1989 to 26.3.1990 is concerned, the suspension period was prior to the insertion of the proviso to F.R.54-B(5), vide G.O.Ms.No.182 dated 31.10.1992 which came into effect from 7.4.1992 and that the said amendment did not, therefore, apply to the first spell of suspension. Learned Government Pleader would

submit that, in any event, since the proviso in its entirety was omitted, vide G.O.Ms. No.214 dated 22.12.1997, much prior to 8.4.2004 when the petitioner submitted his representation and 4.5.2004 when the Tribunal in O.A.2901 of 2004 directed that the respondent-applicant's representation be considered in accordance with F.R.54-B, the respondent-applicant's case was required to be considered in accordance with F.R.54-B dehors the proviso and since F.R.54-B confers a discretion on the competent authority to determine the manner in which the period of suspension is to be treated, the Tribunal had erred in sitting in judgment over the discretion exercised by the competent authority in this regard. In so far as the second spell of suspension, from 26.10.1993 to 25.6.1997 is concerned, Learned Government Pleader would place reliance on the judgment of the Apex Court in **Management of Reserve Bank of India v. Bhopal Singh Panchal**[2], **Krishnakant Raghunath Bibhavnekar v. State of Maharashtra**[3], and **Smt. K. Ponnamma v. The State of Kerala**[4] in support of her submission that where an employee is placed under suspension, on account of his involvement on a criminal charge, he continues to be under suspension, by statutory operation, till he is acquitted and since the employer is not responsible for his suspension, the delinquent employee is not entitled to claim that the period spent by him under suspension should be treated as on duty, merely because he was acquitted in the criminal case later.

Sri Chandraiah Sunkara, learned counsel for the respondent-applicant, on the other hand, would submit that the petitioners herein had deliberately suppressed the relevant facts

and since suppression of facts amounts to an abuse of process of Court the writ petition is liable to be dismissed in limini. Learned Counsel would submit that the rules, notified in G.O.Ms. No. 182 dated 31.10.1992, were amended in G.O.Ms. No. 59 dated 27.03.1995, applying the benefit, under G.O. Ms. No. 182, even to cases of suspension prior to 07.04.1992. According to the Learned Counsel, the petitioners herein had suppressed the fact that G.O.Ms. No. 182 dated 31.10.1992 was amended in G.O.Ms. No. 59 dated 27.03.1995. Learned Counsel would further submit that the 2nd petitioner herein had issued proceedings dated 14.07.2006 in compliance with the notice received in the contempt case treating the period of suspension from 25.11.1995, when the respondent-applicant was acquitted in the criminal case, till he was reinstated to duty on 25.06.1997 "as on duty" and had held that the respondent-applicant shall be entitled for all consequential benefits. According to the learned Counsel, since these proceedings dated 14.07.2006 have also been suppressed, the writ petition as filed is liable to be dismissed as an abuse of process of Court. Learned Counsel would refer to G.O.Ms. No.188 dated 26.5.1998 and submit that an employee, on a punishment being imposed on him, is disentitled from being considered for promotion, and as the respondent-applicant was promoted as a Principal, the petitioners herein must be held to have waived the punishment imposed and as a result of such waiver the respondent-applicant would be automatically entitled for payment of salary and allowances for the period of suspension.

Learned Government Pleader, in reply, would submit that, while the proceedings dated 14.07.2006 issued by the 2nd

petitioner was consequent to the memo issued by the 1st petitioner dated 12.07.2006 which in turn was issued in compliance with the notice issued by the Tribunal in C.A. No. 361 of 2006, subsequently the 1st petitioner, vide memo dated 11.08.2006, while referring to the earlier government memo dated 12.07.2006, had held that its decision, in the memo dated 12.07.2006, would be subject to the outcome of the writ petition to be filed by the government in the High Court.

On a specific query from this Court as to the justification of the Government in filing of the writ petition when it had, in its memo dated 12.07.2006, decided to treat the period of suspension from 25.11.1995 to 25.06.1997 as "on duty", the Learned Government Pleader would fairly concede that, on the respondent-applicant's acquittal in the criminal case on 25.11.1995, since he was not reinstated into duty till 25.06.1997 the respondent applicant could not be faulted for his being continued under suspension, and to this extent, in the second spell of suspension, from 25.11.1995 till 25.06.1997, the order of the government, in its memo dated 12.07.2006, was in order. Taking into account this fair concession of the Learned Government Pleader, with which we are in complete agreement, no interference is called for with the order of the Tribunal in treating the period of suspension of the respondent-applicant, during the spell from 25.11.1995 till 25.06.1997, as "on duty". Since we are affirming the order of the Tribunal, it is wholly unnecessary for us to examine the contention as to whether or not the failure to refer to the proceedings dated 12.07.2006 amounts to an abuse of process of Court. Since the amendment in G.O.Ms. No. 59 dated 27.03.1995, is an omission of a part of a rule, the contention that failure to refer to the

amendment of the rules in G.O.Ms. No. 59 dated 27.03.1995 amounts to suppression of facts does not merit acceptance.

The question which arises for consideration is the manner in which the period of suspension of the respondent-applicant, from 23.09.1989 to 26.03.1990 (1st spell) and 26.10.1993 to 25.11.1995 (2nd spell) should be treated. Before examining this question, it is necessary to extract F.R.54-B in its entirety.

"F.R 54-B. (1)When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement while under suspension; the authority competent to order reinstatement shall consider and make a specific order:-

a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be; and

b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may after giving him an opportunity to make his representation [within sixty days from the date on which communication to this regard is served on him] and after considering the representation, if any submitted by him, direct for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay [only such amount (not being the whole) of such pay and allowances as it may determine].

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duly for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3), the Government servant shall subject to the provisions of sub-rules (8) and (9),

be paid [such amount (not being the whole) of the pay and allowances] to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period [which in no case shall exceed sixty days from the date on which the notice has been served] as may be specified in the notice:

(6) Where suspension is revoked pending finalisation of the disciplinary or Court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1), who shall make an order according to the provisions of sub-rule (3) or sub-rule (5) as the case may be.

(7) In a case falling under sub-rule (5) the period of suspension shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) [The amount] of the full pay and allowances determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the substantive allowance and other allowances admissible under Rule 53.

F.R.54-B was amended and, after Sub-rule (5) thereof, a proviso was inserted by G.O.Ms.No.182 dated 31.10.1992, that in cases where the departmental proceedings against an employee, placed under suspension on or after 7.4.1992 for imposition of a major penalty, finally ended with a minor penalty, the suspension can be said to be wholly unjustified and such employee shall be paid full pay and allowances for the period of suspension by passing an appropriate order. This amendment was notified in G.O.Ms.No.182 dated 31.10.1992 and was deemed to have come into force from 7.4.1992. The benefit of the proviso inserted to F.R.54-B(5), in G.O.Ms.No.182 dated 31.10.1992, was sought for, even in cases, where the suspension pertained to a period prior to

7.4.1992, and which were pending settlement. The Government took note of the order of the Tribunal in O.A.3056 of 1993 and the advice of the Law Department and, after careful consideration of the matter, decided to amend the proviso to sub-rule (5) of F.R.54 omitting the expression “on or after 7.4.1992”. Subsequently the proviso, which was inserted by G.O.Ms.No.182 dated 31.10.1992, was omitted in its entirety in G.O.Rt.No.214 dated 22.12.1997.

While it is true that the 1st spell of suspension of the respondent-applicant, from 23.09.1989 till 26.03.1990, was prior to insertion of the proviso to sub-rule (5) of F.R.54-B, vide G.O.Ms. No. 182 dated 31.10.1992, it cannot be lost sight of that the respondent-applicant was inflicted with the punishment, of stoppage of one increment without cumulative effect, only on 29.11.1995. It is only when the minor penalty, of withholding of one increment without cumulative effect, was imposed on the respondent-applicant on 29.11.1995, is the relevant statutory provision, in force during the said period, required to be taken into consideration. While F.R. 54-B (1) requires the competent authority, on reinstatement of a government servant, to make a specific order regarding the pay and allowances to be paid for the period of suspension and as to whether or not the said period should be treated as spent on duty, Sub-rule(6) provides that where the suspension is revoked, pending finalization of the disciplinary proceedings, any order passed under sub-rule(1), before the conclusion of the proceedings against a government servant, shall be reviewed by the competent authority, on its own motion, after conclusion of the disciplinary proceedings. Even if the competent authority had passed an order under F.R.54-B(1),

soon after the respondent – applicant was reinstated to duty on completion of the first spell of suspension on 26.3.1990, it would have been required to review, on its own motion, the decision taken earlier after the punishment, of stoppage of one increment without cumulative effect, was inflicted on the respondent-applicant on 29.11.1995. In the present case, since no order was passed earlier under F.R. 54-B(1), when the respondent-applicant was reinstated in service on 26.3.1990 prior to completion of the disciplinary proceedings, the competent authority was statutorily required, in terms of F.R.54-B(6), to take a decision, regarding the pay and allowances to be paid for the period of suspension and whether or not the said period should be treated as on duty. In effect, F.R. 54(B)(6) requires this decision to be taken or, if already taken earlier, to review such a decision, on completion of disciplinary proceedings. Since the disciplinary proceedings stood concluded, consequent upon the order of punishment dated 29.11.1995, whereby a minor penalty was inflicted, the rule in force, on the date when the respondent-applicant was imposed the punishment, is the rule which is required to be applied. On 29.11.1995, the proviso to sub-rule (5) of F.R.54-B, as inserted in G.O.Ms.No.182 dated 31.10.1992, had been amended vide G.O.Ms.No.59 dated 27.3.1995 and as on that date, the expression “on or after 7.4.1992” was omitted making the proviso to F.R.54-B(5), applicable even to cases of suspension which had not been settled till then, even though the suspension related to a period prior to 7.4.1992. As such the proviso to sub-rule (5) of F.R.54-B, as amended vide G.O.Ms. No. 59 dated 27.03.1995, is the rule which is applicable to the case of the respondent-applicant. Accordingly the first spell of the suspension of the

respondent-applicant, for the period from 23.09.1989 till 26.03.1990, must be held to be wholly unjustified and the respondent-applicant must be held to be entitled for payment of full pay and allowances for this period of suspension. The order of the Tribunal, in treating the first spell of suspension of the respondent applicant, i.e., from 23.9.1989 to 26.3.1990, as on duty does not, in our view, call for interference. Learned Government Pleader for Higher Education would, however, submit that the expression "on or after 7.4.1992" was omitted in the proviso to sub-rule (5) of F.R.54-B and since G.O.Ms.No.182 dated 31.10.1992, which brought forth the amendment to F.R.54-B(5) by insertion of the proviso was specifically deemed to have come into force from 7.4.1992, the omission of the words "on or after 7.4.1992", vide G.O.Ms.No.59 dated 27.3.1995, was of no consequence, since even in the absence of the date, from which the amendment would come into force, being specified, any amendment to a rule is normally, prospective in its operation. This submission, of the Learned Government Pleader, does not merit acceptance. Firstly, the very object of issuing G.O.Ms. No. 59 dated 27.03.1995, as stated in the preamble to the G.O, is to extend the benefit of the proviso to F.R.54-B even to cases of suspension prior to 7.4.1992 which were pending settlement. A purposive interpretation has to be placed to the said amendment and, when so read, it is clear that the object of the amendment, in G.O.Ms. No. 59 dated 27.03.1995, was to extend the benefit of the proviso even to cases of suspension prior to 7.4.1992. While the period of suspension of the respondent-applicant was prior to 7.4.1992, it was pending settlement and, therefore, the benefit of the proviso was required to be extended to the respondent-applicant. Secondly, if the

contention of the learned Government Pleader, that G.O.Ms.No.182 dated 31.10.1992 must be held to be prospective, were to be accepted, the very amendment, in G.O.Ms.No.59 dated 27.3.1995, must be held to be an exercise in futility. If, even after omission of the words "on or after 7.4.1992" in the proviso to sub-rule (5) of F.R.54-B, the amendment in G.O.Ms.No.182 dated 31.10.1992, is held to be prospective in its application, it would, in effect, mean that the rule making authority had indulged in a wholly unnecessary exercise of deleting the words "on or after 7.4.1992", in G.O.Ms. No. 182 dated 31.10.1992, vide G.O.Ms. No. 59 dated 27.03.1995. On a reading of the preamble to the amendment in G.O.Ms. No. 59 dated 27.03.1995, it is clear that such was not the intention of the rule making authority.

The contention of the learned Government Pleader that, since the proviso in its entirety was omitted, by G.O.Rt.No.214 dated 22.12.1997, prior to the submission of the representation by the respondent-applicant on 8.4.2000, no reliance can be placed on the proviso to sub-rule (5) of F.R.54(B), does not also merit acceptance. The amendment, notified in G.O.Rt.No.214 dated 22.12.1997, specifically provides that it would come into force with immediate effect i.e., from the date it was notified in G.O.Rt.No.214 dated 22.12.1997. Since the proviso was omitted from 22.12.1997, and since the period of suspension of the petitioner was from 23.9.1989 to 26.3.1990 and the punishment of stoppage of one increment without cumulative effect as imposed on 29.11.1995, were both prior thereto, the omission of the proviso, vide G.O.Rt.No.214 dated 22.12.1997, would not disentitle the respondent - applicant from claiming the benefit of the proviso

to sub-rule (5) of F.R.54-(B), in G.O.Ms. No. 182 dated 31.10.1992 as amended vide G.O.Ms. No. 59 dated 27.03.1995. We agree with the learned Govt. Pleader that the Tribunal had erred in placing reliance on the judgment of the Supreme Court in **Y.V. Rangaiah**[1], wherein it was held that the vacancies, which had arisen prior to the amended rules, would be governed by the old rules and not by the amended rules and that promotions were required to be made under the old rules and not by the amended rules. The said judgment cannot be pressed in aid, while interpreting the proviso to sub-rule (5) of F.R.54-B. Nonetheless, for the reasons afore-stated, we see no reason to interfere with the order of the Tribunal in holding that the respondent – applicant was entitled for payment of salary and allowances for the period of suspension from 23.9.1989 till 26.3.1990 and to have the said period of suspension treated as "on duty".

Now the period of suspension from 26.10.1993 till 29.11.1995, when the petitioner was placed under suspension pending the criminal case in C.C. No. 202 of 1993. The Proviso to F.R.54-B(5) relates only to cases where an employee is placed under suspension pending disciplinary proceedings in which he is imposed a minor penalty and does not apply to cases of suspension pending criminal proceedings. The Tribunal, therefore, erred in applying the proviso to F.R.54-B(5) even for this spell of suspension.

In **Bhopal Singh Panchal**[2], the Supreme Court, while interpreting Regulations 39, 46 and 47 of the Reserve Bank of India (Staff) Regulation, 1948, observed:-

"…….We have already pointed out the effect of the relevant provisions of

Regulations 39, 46 and 47. The said regulations read together, leave no manner of doubt that in case of an employee who is arrested for an offence, as in the present case, his period of absence from duty is to be treated as not being beyond circumstances under his control. In such circumstances, when he is treated as being under suspension during the said period, he is entitled to subsistence allowance. However, the subsistence allowance paid to him is liable to be adjusted against his pay and allowances if at all he is held to be entitled to them by the competent authority. The competent authority while deciding whether an employee who is suspended in such circumstances is entitled to his pay and allowances or not and to what extent, if any, and whether the period is to be treated as on duty or on leave, has to take into consideration the circumstances of each case. It is only if such employee is acquitted of all blame and is treated by the competent authority as being on duty during the period of suspension that such employee is entitled to full pay and allowances for the said period. **In other words, the Regulations vest the power exclusively in the Bank to treat the period of such suspension on duty or on leave or otherwise. The power thus vested cannot be validly challenged. During this period, the employee renders no work. He is absent for reasons of his own involvement in the misconduct and the Bank is in no way responsible for keeping him away from his duties. The Bank, therefore, cannot be saddled with the liability to pay him his salary and allowances for the period. That will be against the principle of 'no work, no pay' and positively inequitable to those who have to work and earn their pay. As it is, even during such period, the employee earns subsistence allowance by virtue of the Regulations. In the circumstances, the Bank's power in that behalf is unassailable……..” (emphasis supplied)**

In **Krishnakant Raghunath Bibhavnekar**[3], the Supreme Court, while interpreting Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Services, and Payment during Suspension, Dismissal and Removal) Rules, 1991 held:-

“…. MR. Ranjit Kumar, learned counsel for the appellant, contends that under Rule 72 (3) of the Maharashtra Civil Services (Joining Time, Foreign Services, and Payment during Suspension, Dismissal and Removal) Rules, 1991 (for short, the 'rules'), the Rules cannot be applied to the appellant nor would the respondents be justified in treating the period of suspension of appellant, as the period of suspension as not being warranted under the Rules. We find no force in the contention. It is true that when a Government servant is acquitted of offences, he would be entitled to re-instatement. But the question is: whether he would be entitled to all consequential benefits

including the pensionary benefits treating the suspension period as duty period, as contended by Shri Ranjit Kumar? **The object of sanction of law behind prosecution is to put an end to crime against the society and laws thereby intends to restore social order and stability. The purpose of prosecution of a public servant is to maintain discipline in service, integrity, honesty and truthful conduct in performance of public duty or for modulation of his conduct to further the efficiency in public service. The Constitution has given full faith and credit to public acts. Conduct of a public servant has to be an open book; corrupt would be known to everyone. The reputation would gain notoriety. Though legal evidence may be insufficient to bring home the guilt beyond doubt or fool-proof. The act of reinstatement sends ripples among the people in the office/locality and sows (sends) wrong signals for degeneration of morality, integrity and rightful conduct and efficient performance of public duty. The constitutional animation of public faith and credit given to public acts, would be undermined. Every act or the conduct of a public servant should be to effectuate the public purpose and constitutional objective. Public servant renders himself accountable to the public. The very cause for suspension of the petitioner and taking punitive action against him was his conduct that led to the prosecution of him for the offences under the Indian Penal Code. If the conduct alleged is the foundation for prosecution, though it may end in acquittal on appreciation or lack of sufficient evidence, the question emerges: whether the Government servant prosecuted for commission of defalcation of public funds and fabrication of the records, though culminated into acquittal, is entitled to be reinstated with consequential benefits? In our considered view, this grant of consequential benefits with all back-wages etc. cannot be as a matter of course. We think that it would be deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course, on his acquittal.** Two courses are open to the disciplinary authority, viz. , it may enquire into misconduct unless, the self-same conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all; but acquittal is not on benefit of doubt given. Appropriate action may be taken thereon. Even otherwise, the authority may, on reinstatement after following the principle of natural justice, pass appropriate order including treating suspension period as period of not on duty, (and on payment of subsistence allowance etc.) Rules 72 (3), 72 (5) and 72 (7) of the Rules give a discretion to the Disciplinary Authority. **Rule 72 also applies, as the action was taken after the acquittal by which date rule was in force. Therefore, when the suspension period was treated to be a suspension pending the trial and even after acquittal, he was reinstated into service, he would not be entitled to the consequential benefits. As a consequence, he would not**

be entitled to the benefits of nine increments as stated in para 6 of the additional affidavit. He is also not entitled to be treated as on duty from the date of suspension till the date of the acquittal for purpose of computation of pensionary benefits etc. The appellants is also not entitled to any other consequential benefits as enumerated in paragraphs 5 and 6 of the additional affidavit……..” (emphasis supplied)

In **Smt. K. Ponnamma**[4], the Apex Court, while interpreting Rules 56 and 57 of Kerala Service Rules, the Supreme Court observed:-

“…….A reading thereof would clearly indicate that where an officer has been kept under suspension, on account of the pendency of the charges/detention for 48 hours and continued to remain under suspension pending the trial of the criminal charge, statutorily he/she is disabled to perform the duties of the post. On reinstatement under Rule 56, the competent authority shall have a duty to consider whether, on reinstatement, suspended officer would be entitled to the payment of full pay etc. for the period of his suspension. **The mandate of Rule 56 is that the competent authority should consider the case in accordance with the rules and pass the order. The nature of the order is discretionary depending upon the facts in the case. It is seen that on account of the involvement of the petitioner in a criminal charge by statutory operation, she was under suspension till she was acquitted. On acquittal, the departmental enquiry was conducted as to the nature of the order to be made under Rule 56. Accordingly, the authority, in its discretion, found that the payment of the salary during the period of suspension except suspension allowance already paid, could not be granted.** It being in accordance with the Rules, we do not think that the High Court has committed any error warranting interference……” (emphasis supplied)

While it is true that the rules, in the aforesaid judgments of the Supreme Court, are not in pari materia with F.R.54-B, we are unable to accept the submission of Sri Chandraiah Sunkara, learned counsel for the respondent – applicant, that in all the three judgments afore-cited, the rules specifically provided that the period of suspension should be treated as “dies-non” on the principle of “no work no pay” Regulation 46(2) of the Reserve Bank of India (Staff) Regulation, 1948, Rule 72 the Maharashtra Civil

Services (Joining Time, Foreign Services, and Payment during Suspension, Dismissal and Removal) Rules, 1991and Rule 56 of the Kerala Service Rules confer a discretion on the competent authority to determine as to the manner in which the period of suspension of the delinquent employee is required to be treated. In the aforesaid cases, the Apex Court held that the competent authority has to take into consideration the facts and circumstances of each case, that the rules/regulations which confer such a discretion on the competent authority cannot be validly challenged, since during the period of suspension the employee renders no service to the employer, he is absent for his own involvement and the employer, who is in no way responsible for keeping him out of service, cannot be saddled with the liability to pay him salary and allowances for the said period as that would be against the principle of “no work no pay”. The fact that the respondent – applicant was facing a criminal prosecution, consequent upon which alone he was placed under suspension during the period from 26.10.1993 till 25.11.1995, is not in dispute. It is also not in dispute that the Rules provide that an employee, who is involved in a criminal case, may be placed under suspension. By statutory operation, and in view of his involvement in the criminal case, the respondent – applicant was placed under suspension. The mere fact that he was subsequently acquitted would not automatically entitle him for payment of salary and allowances for the said period of suspension, since his remaining away from duty was on account of his involvement in a criminal case and not for any fault on the part of the petitioners herein. The competent authority, on considering the facts and circumstances of the case, has chosen

to direct that the period of suspension from 26.10.1993 till 25.11.1995 be treated as extraordinary leave. It was not open to the Tribunal to sit in judgment or to interfere with the discretion exercised, by the competent authority, in accordance with the rules in F.R.54-B. The order of the Tribunal, in directing payment of salary and allowances to the respondent-applicant, for the period from 26.10.1993 till 25.11.1995, must therefore be set aside. The contention of Sri Chandraiah Sunkara, Learned Counsel for the respondent-applicant, that since the respondent – applicant was promoted as the Principal, it must be held that the employer had waived the earlier punishment does not merit acceptance. Admittedly, G.O.Ms.No.188 dated 26.5.1998 is in the nature of executive instructions and thereunder, before taking any decision to reduce the penalty awarded or to give an out of turn promotion, the file is required to be circulated to the Chief Minister through the Chief Secretary and the concerned Ministry. The said executive instructions does not specifically provide for an embargo on promotion. Accepting the contention of the respondent-applicant, that the executive instructions, in G.O.Ms.No.188 dated 26.5.1998, is applicable to the present case, would necessarily mean that the respondent-applicant was not entitled to be promoted at all in which event his promotion as a Principal may itself call for a review. We are, however, satisfied that G.O.Ms.No.188 dated 26.5.1998 has no application to the case on hand. The mere fact that the respondent-applicant was promoted would not necessitate the conclusion that the punishment, imposed on him earlier, was waived. In any event, the period of suspension from 26.10.1993 till 25.11.1995 is for the

respondent-applicant's involvement in a criminal case and not on account of any punishment imposed on him pursuant to a departmental enquiry. The contention of the respondent-applicant, based on G.O.Ms.No.188 dated 26.5.1998, must therefore be rejected.

The order of the Tribunal, in directing payment of salary and allowances and to treat the period spend by the respondent – applicant under suspension as "on duty" does not call for interference except for the period of suspension from 26.10.1993 till 25.11.1995. For this period of suspension, from 26.10.1993 till 25.11.1995, the order of the Tribunal is set aside and the order of the competent authority dated 6.8.2004 in treating this period as extraordinary leave is confirmed. For the other spells of suspension from 23.9.1989 till 26.3.1990 and again from 25.11.1995 to 25.6.1997, the order of the Tribunal, in holding that the respondent-applicant was to be treated as "on duty", and in quashing the order of the competent authority dated 6.8.2004 in treating these periods of suspension also as extraordinary leave, is confirmed.

The writ petition is accordingly disposed of. However, in the circumstances, without costs.

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B.PRAKASH RAO,J

Date: -09-2006

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RAMESH RANGANATHAN, J

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[1] AIR 1983 SC 852

[2] AIR 1994 SC 552

[3] 1997(3) SCALE 180

[4] 1997(3) SCALE 342